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CASE NO.: CWA-01-2009-0054

ATTORNEY: J. Kopf

SITE NAME: Downeast Energy Corp.

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2	Enforcement Case Screening Worksheet (includes Criminal and Multi-media screening)	5/18/09
3	Penalty Calcs for Springvale and Waterville Maine sites	5/18/09
4	Executive Summary	5/18/09
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FILE INDEX

CASE NO.: CWA-01-2009-0054

ATTORNEY: J. Kopf

SITE NAME: Downeast Energy Corp.

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Steve Hall

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 City, State, ZIP+4 *18 Spring St, Brunswick, ME 04011-2318*

PS Form 3800, August 2005

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1. Article Addressed to:

Steve Hall
Fleet / Facilities Mgr.
Downeast Energy Corp.
18 Spring Street
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

1 Congress Street, Suite 1100
Boston, MA 02114-2023

AUG - 3 2009

Steve Hall
Fleet/Facilities Manager
Downeast Energy Corp.
18 Spring St
Brunswick, ME 04011-2318

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Modification to Administrative Order Issued to Downeast Energy Corp. ("Downeast Energy")
Docket No. CWA-311-09-024, for Biddeford, Maine facility

Dear Mr. Hall:

On June 3, 2009, EPA issued an Administrative Order ("Order"), Docket No. CWA-311-09-024, to Downeast Energy requiring it to upgrade seven facilities listed in Attachment A to the Order, in order to comply with the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112, promulgated under Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. § 1321. Facility upgrades necessary for compliance with the Oil Pollution Prevention Regulations at the Biddeford, Maine facility were to be completed no later than August 1, 2009.

Based on a letter submitted to EPA dated July 19, 2009, as well as on additional conversations with Alex Sherrin, On-Scene Coordinator, you have requested that the deadline for the work required to bring the Biddeford, Maine, facility into full compliance with the Oil Pollution Prevention be extended to September 30, 2009.

For the reasons described in your July 17, 2009 letter, and subject to the conditions described in the July 17, 2009 letter, EPA hereby grants an extension for completion of the facility upgrades at the Biddeford facility to September 30, 2009.

If you have any questions concerning this letter or the Order, please contact Alex Sherrin, On-Scene Coordinator, at (617) 918-1252, or have your attorney contact Jeffrey Kopf, Senior Enforcement Counsel at (617) 918-1796.

Sincerely,

A handwritten signature in black ink that reads "Denny Dart". The signature is stylized with a large, looped "D" and a cursive "Dart".

Denny Dart, Manager,
Water Technical Unit
Office of Environmental Stewardship
U.S. EPA, Region 1

cc: Alex Sherrin, On-Scene Coordinator, EPA Region 1
Don Grant, Spill-SPCC Enforcement Coordinator, EPA Region 1
✓ Jeffrey Kopf, Senior Enforcement Counsel, EPA Region 1
Butch Bowie, MEDEP Bureau of Remediation Division of Technical Services (via email)



U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, MA 02114-2023

COMBINED ROUTING AND CONCURRENCE SLIP
July 24, 2009

done
8/3/09

RE: Downeast Energy Corp. Modification to Order

ROUTING TO:

	Name	Initials	Date
1.	Jeff Kopf (SEL)	JK	7/24/09
2.	Alex Sherrin (HBR)	AS	7/28/09
3.	Don Grant (SEW)	DG	7-31-09
4.	Denny Dart (SEW)	DD	8/3/09
5.			
6.			
7.			
8.			

CONCURRENCE:

The signature above signifies concurrence with the following documents:

Extension for SPCC compliance at Biddeford, ME facility

REMARKS:

Enclosed for your signature is an extension for SPCC compliance at Downeast Energy's Biddeford, ME facility.

FROM:

Name	Phone Number
Jeff Kopf (SEL)	1796
PLEASE RETURN TO Wanda Williams for Mailing	



July 17, 2009

Alex Sherrin, On-Scene Coordinator
U.S. Environmental Protection Agency –Region 1
1 Congress Street
Suite 1100 (Mail Code HBR)
Boston, MA 02114-2023

and

Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
1 Congress Street
Suite 1100 (Mail Code SEL)
Boston, MA 02114-2023

Dear Alex and Jeff;

I am requesting an extension in the compliance date for our Biddeford, ME location. We have finalized the design work and are putting this out to bid next week. Our pre-bid on site conference with the bidders will be on 07/28/2009 and the bids are due back by 08/05/09. Obviously the work itself will not be completed in time to meet the August 1 deadline. We will close the site down no later than 07/31/2009 and no longer deliver any product to the storage tanks until the work is completed. Scott Collins, of St. Germain and Associates, our engineer on the project, is estimating a completion date of September, 15, 2009.

Thank you for your consideration.

Sincerely,

Steve Hall
Fleet/Facilities Manager

**DOWNEAST ENERGY
& BUILDING SUPPLY***Good Friends For All Seasons*18 SPRING ST. PO BOX 250
BRUNSWICK, ME 04011-0250

****FACSIMILE TRANSMISSION COVER SHEET****

TO: **ERA**ATTENTION: **JEFF KOPF**NUMBER OF PAGES (INC. COVER SHEET) **2**

PERSON SENDING TRANSMISSION: _____

IF YOU HAVE ANY PROBLEMS OR QUESTIONS REGARDING THIS
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FAX# 207-725-4333

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Maine Oil Storage Company Pays Penalty to Settle Clean Water Violations

Release date: 07/08/2009

Contact Information: Paula Ballentine, 617-918-1027

Maine Oil Storage Company Pays Penalty to Settle Clean Water Violations

(Boston, Mass. – July 8, 2009) – The Downeast Energy Corporation will pay a \$157,500 fine for failing to adequately prepare and fully implement federally regulated oil spill prevention, control and countermeasure (SPCC) plans at its Maine oil storage facilities.

An EPA inspection at Downeast Energy's Springvale oil storage facility found that, although the facility had developed an SPCC plan for that facility, the plan was not fully implemented and did not meet all of the federal prevention requirements. In response to an EPA information request following the Springvale inspection, Downeast Energy indicated that it had identified six additional facilities where the SPCC plans were not fully implemented as required by the Oil Pollution Prevention regulations.

Upon notification of the violations, Downeast was responsive to EPA's requests to bring its facilities into compliance. Under the terms of the settlement with EPA, Downeast has committed to ensuring that all seven of its facilities will come into full compliance with the Oil Pollution Prevention regulations by August 1, 2009.


Oil spill prevention requirements under the Federal Clean Water Act can apply to certain oil storage and distribution facilities if their storage capacity rises above 1,320 gallons and due to their location, the facility could ever reasonably be anticipated to release oil products into a waterway of the United States or adjoining shoreline area. If these criteria are met, these facilities must implement SPCC plans and utilize spill containment systems to reduce the likelihood of an accident or spill that could endanger public health and the environment.

In the continual effort to protect New England's environment from oil spills, EPA has inspected over 100 facilities since 2007. Nationwide in 2008, EPA had required responsible and/or liable parties to spend an estimated \$11 billion on pollution controls, environmental projects and cleanup. EPA expects that these activities will set the stage for an annual reduction of more than three billion pounds of pollution.

More information:

- Federal oil spill prevention requirements (<http://www.epa.gov/oilspill/spcc>)
- Oil Spill prevention in New England (<http://www.epa.gov/region1/superfund/er/oilstor.htm>)

###

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EPA: United States Environmental Protection Agency

A-Z index

News Releases from Region 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

July 7, 2009

CDR Wayne Clayborne
First Coast Guard District
Captain John Foster Williams Building
408 Atlantic Avenue
Boston, MA 02210-2209
leslie.w.clayborne@uscg.mil

Via Email

Jim Dusch
Maine Department of Environmental Protection
State House Station 17
Augusta, ME 04333-0017
jim.e.dusch@maine.gov

Via Email

Re: Notice of Clean Water Act Administrative Consent Agreement and Final Order
Issued to Downeast Energy Corp.
Docket No. CWA-01-2009-0054

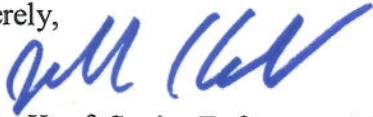
Dear CDR Clayborne and Mr. Dusch:

Enclosed please find a copy of a consent agreement and final order both initiating and resolving an administrative civil penalty action against the Downeast Energy Corp. for violations of Section 311(j) Clean Water Act and the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the following facilities:

- 288 River Rd., Springvale, Maine
- 95 College Avenue, Waterville, Maine

If you have any questions regarding this matter, please feel free to contact Alex Sherrin, On-Scene Coordinator, at (617) 918-1252, or you may contact me at (617) 918-1796.

Sincerely,



Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA Region 1

Enclosures (CAFO)

cc: Alex Sherrin, On-Scene Coordinator, U.S. EPA Region 1 (via email)
Butch Bowie, MEDEP Bureau of Remediation Division of Technical Services
(via email)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

1 Congress Street
Suite 1100 - SEL
Boston, MA 02114-2023

July 7, 2009

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
One Congress Street
Suite 1100, Mail Code RAA
Boston, MA 02114-2023

BY HAND

Re: In the Matter of: Downeast Energy Corp., Docket No. CWA-01-2009-0054
Filing of Consent Agreement and Final Order

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order both initiating and settling the matter referenced above.

Pursuant to EPA Order Classification No. 2551.1A dated June 7, 2006, the Regional Hearing Clerk (RHC) shall send a copy of the CAFO in any Clean Water Act (CWA) case assessing a penalty under the authority of Section 311 of the CWA to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

In addition, the RHC must pass along the name and address of the regional attorney responsible for any collection recommendation if the civil debt becomes delinquent. For this case, the responsible attorney is:

Jeffrey Kopf
Senior Enforcement Counsel
EPA Region 1
1 Congress St., Suite 1100 (SEL)
Boston, MA 02114-2023
Tel: 617-918-1796

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Kopf', written in a cursive style.

Jeffrey Kopf, Senior Enforcement Counsel
EPA Region 1

Enclosure (CAFO)

cc: Steve Hall, Downeast Energy Corp.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
1 Congress Street
Suite 1100 - SEL
Boston, MA 02114-2023

July 7, 2009

Steve Hall, Facilities-Fleet Manager
Downeast Energy
18 Spring St., PO Box 250
Brunswick, ME 04011-0250

Certified Mail
Return Receipt Requested

Re: In the Matter of: Downeast Energy Corp.,
Filing of Consent Agreement and Final Order, Docket No. CWA-01-2009-0054

Dear Mr. Hall:

Enclosed is a fully executed copy of the Consent Agreement and Final Order ("CAFO") that has resolved the matter referenced above.

Please call me at 617-918-1796 if you have any questions related to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Kopf", written over a horizontal line.

Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region 1

Enclosure (CAFO)

cc: Alex Sherrin, On-Scene Coordinator, EPA Region 1 (by hand)
Don Grant, Spill-SPCC Enforcement Coordinator, EPA Region 1 (via email)
Butch Bowie, Maine Department of Environmental Protection (via email)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)

DOWNEAST ENERGY CORP.)

Brunswick, Maine,)

Respondent)
_____)

Docket No. CWA-01-2009-0054

**CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II CIVIL
PENALTY UNDER SECTION
311(b)(6)(B)(ii) OF THE
CLEAN WATER ACT**

The Regional Administrator of the United States Environmental Protection Agency, Region I ("EPA"), issues this Consent Agreement and Final Order ("CAFO") to Downeast Energy Corp. ("Respondent"). EPA alleges that Respondent violated Section 311(j) of the Clean Water Act (the "Act"). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 ("Part 22 Rules").

CONSENT AGREEMENT AND FINAL ORDER

Docket No. CWA-01-2009-0054 - Page 1

US EPA Region 1
One Congress St., Suite 1100
Boston, MA 02114-2023

I. DESCRIPTION OF VIOLATIONS

1. EPA alleges that Respondent failed to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) and other provisions of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

Statutory and Regulatory Authority

2. EPA takes this action under the authority of Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), for violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j).

General Allegations

3. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain such discharges”

4. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention regulations establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the U.S. or adjoining shorelines.

5. Under 40 C.F.R. § 112.3 an owner or operator of an onshore facility subject to the Oil Pollution Prevention regulations must prepare a Spill Prevention Control and Countermeasure (“SPCC”) Plan in writing in accordance with 40 C.F.R. § 112.7, and fully implement such plan.

6. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7), 1362(5).

7. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of an oil storage and distribution facility located at 288 River Rd., Springvale, Maine (“Springvale Facility”), and at 95 College Avenue, Waterville, Maine (“Waterville Facility”).

8. Respondent is engaged in storing, using, and consuming “oil” or oil products located at each Facility within the meaning of 40 C.F.R. § 112.2.

9. Each Facility has an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

10. Each Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

11. Each Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

12. “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

13. Based on the above, each Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable waters of the United States or its adjoining shorelines in a harmful quantity.

14. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at each Facility.

Findings of Violation

15. On December 18, 2008 an authorized EPA representative inspected the Springvale Facility to determine compliance with Section 311(j) of the Act, and in particular, the requirements of the Oil Pollution Prevention regulations. EPA obtained information related to the Waterville Facility in response to an Information Request issued to Respondent.

16. Based on these inspections and on documents submitted by Respondent to EPA subsequent to the inspection, EPA identified the following violations:

Failure to Prepare and Implement SPCC Plans

17. Respondent had failed to fully implement an SPCC plan at each Facility in accordance with the provisions of 40 C.F.R. § 112.7 in violation of 40 C.F.R. § 112.3.

18. Respondent's failure to fully implement an SPCC plan for each Facility violated 40 C.F.R. § 112.3. Respondent is in violation of these requirements each day beginning with the period it was required to implement a plan under 40 C.F.R. Part 112, and ending when it fully implements a written, Professional-Engineer certified, SPCC Plan for the Facility consistent with all the requirements of 40 C.F.R. Part 112, or until it no longer owns or operates the Facility, or until the Facility is "permanently closed" in accordance with 40 C.F.R. § 112.2.

19. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violations continue for violations occurring between March 15, 2004 and January 12, 2009, and \$16,000 per day for each day during which the violations continue, for violations occurring after January 12, 2009.

II. CONSENT AGREEMENT

EPA and Respondent agree that the above matter constitutes a disputed claim and that settlement of the above matter is in the public interest, and that entry of this CAFO without litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this action hereby stipulate as follows:

20. Respondent admits the jurisdictional allegations in Section I above.

21. Respondent neither admits nor denies the specific factual allegations contained in Section I above.

Waiver of Rights

22. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

Penalty

23. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of ONE-HUNDRED FIFTY-SEVEN THOUSAND FIVE-HUNDRED DOLLARS (\$157,500)

Payment Terms

24. Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

25. Within 30 days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency" and referencing the title and docket number of the action ("In the Matter of Downeast Energy, Docket No. CWA-01-2009-0054") and "Oil Spill Liability Trust Fund - 311" in the amounts specified in Paragraph 23 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

26. Respondent shall note on the penalty payment check the title and docket number of this case. Respondent shall submit copies of the check to the following people:

Wanda Santiago
Regional Hearing Clerk (RAA)
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

and

Jeffrey Kopf
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

27. The proposed administrative civil penalty has been determined in accordance with Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, and Section 311(b)(8) of the Act. For purposes of determining the amount of any penalty to be assessed, Section 311(b)(8) requires EPA to take into account the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require. In developing the proposed settlement penalties in this CAFO, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the factors identified at Section 311(b)(8) of the Act.

28. The penalty above represents a civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

General Provisions

29. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), failure by the Respondent to pay the penalty amounts relating to the CWA violations assessed by this CAFO in full by the date required shall subject the Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates from the effective date of the CAFO. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Further, under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis any CWA penalty payment assessed by this CAFO, Respondent shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. Interest will be assessed pursuant to 31 C.F.R. § 901.9(b), promulgated pursuant to 31 U.S.C. § 3717. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

30. EPA states that it has provided a thirty day opportunity for public notice and comment on this proposed CAFO pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), and has not received any public comments.

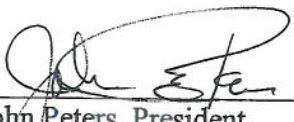
31. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to herein.

32. Except as described in paragraph 29 of the Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

FOR DOWNEAST ENERGY CORP.:

Date:

5/29/09




John Peters, President
Downeast Energy Corp.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date:

06/03/09




Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

III. FINAL ORDER

33. In accordance with 40 C.F.R. § 22.18(b), the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

34. Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Final Order shall become final 30 days from today pursuant to Section 311(b)(6)(D) of the CWA, 33 U.S.C. § 1321(b)(6)(D).

Date: July 7, 2009


Jill Metcalf
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

In the Matter of: Downeast Energy Corp., Docket No. CWA-01-2009-0054
Consent Agreement and Final Order

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:

Original and 1 copy
hand delivered:

Regional Hearing Clerk
U.S. EPA, Region I
1 Congress Street
Suite 1100 (RAA)
Boston, MA 02114-2023

Copy via email

Steve Hall
Downeast Energy Corp.
18 Spring St.
Brunswick, ME 04011-2318

Date:

7/7/09



Jeffrey Kopf
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100
Boston, MA 02114-2023
tel: (617) 918-1796
fax: (617) 918-0796
email: kopf.jeff@epa.gov

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 18 Spring Street, PO Box 250
 Brunswick, ME 04011-0250

PS Form 3800, August 2006

See Reverse for Instructions

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Steve Hall, Facilities - Fleet Manager
 Downeast Energy
 18 Spring Street, ~~PO Box 250~~
 Brunswick, ME 04011-0250

2. Article Number

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X *Ratti Estes*

- ☐ Agent
☐ Addressee

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Ratti Estes

C. Date of Delivery

7/7

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☐ Registered ☐ Return Receipt for Merchandise
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102595-02-M-1540



U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, MA 02114-2023

COMBINED ROUTING AND CONCURRENCE SLIP
July 6, 2009

RE: Downeast Energy Corp.

ROUTING TO:

	Name	Initials	Date
1.	Jill Metcalf	JTM	7/7/09
2.			
3.			
5.			
6.			
7.			
8.			

CONCURRENCE:

The signature above signifies concurrence with the following documents:

1. Consent Agreement and Final Order

REMARKS:

Enclosed for your signature is a Consent Agreement and Final Order resolving CWA Section 311 violations with Downeast Energy.

FROM:

Name	Phone Number
Jeff Kopf (SEL)	1796
PLEASE RETURN TO JEFF FOR MAILING	



U.S. Environmental Protection Agency
One Congress Street, Suite 1100
Boston, MA 02114-2023

COMBINED ROUTING AND CONCURRENCE SLIP
May 18, 2009

RE: Downeast Energy Corp.

ROUTING TO:

	Name	Initials	Date
1.	Alex Sherrin (HBR)	AS	5/18/09
2.	Cosmo Caterino (HBR)	CC	5/20/09
3.	Steve Novick (HBR)	SN	5/26/09
4.	Jeff Kopf (SEL)	JK	5/18/09
5.	Toni Bandrowicz (SEL)	TB	5/26/09
6.	Don Grant (SEW)	DG	5-26-09
7.	Denny Dart (SEW)	DD	5-26-09
8.	Susan Studlien (SAA)	SS	06/03/09

CONCURRENCE:

The signature above signifies concurrence with the following documents:

1. Consent Agreement and Final Order: Downeast Energy for SPCC violations of Section 311 of the Clean Water Act.
2. Administrative Order on Consent
3. Executive Summary

REMARKS:

Enclosed for your signature is a Consent Agreement and Final Order resolving CWA Section 311 violations with Downeast Energy and an Administrative Order on Consent requiring the company to be in full compliance with the Oil Pollution Prevention regulations by July 1, 2009
--

FROM:

Name	Phone Number
Jeff Kopf (SEL)	1796
PLEASE RETURN TO JEFF FOR MAILING	



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

July 6, 2009

Jill Metcalf
Action Regional Judicial Officer
U.S. EPA, Region I
1 Congress Street (RAA)
Boston, MA 02114-2023

By Hand

Re: In the Matter of: Downeast Energy Corp., Docket No. CWA-01-2009-0054
Consent Agreement and Final Order for Approval

Dear Ms. Metcalf:

In accordance with 40 C.F.R. § 22.18(b), enclosed please find a Consent Agreement and Final Order ("CAFO") that has been signed by the parties and is now being submitted to you for approval. Please note that consistent with 40 C.F.R. §§ 22.13(b) and 22.18(b) this CAFO both commences and concludes the matter referenced above.

The proposed penalty of \$157,500 in the matter is consistent with EPA's Civil Penalty Policy for Violations of Section 311(b)(3) and Section 311(j) of the Clean Water Act (CWA). The Policy is based on the statutory penalty factors set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8).

Pursuant to 40 C.F.R. § 22.45, EPA was required to notify the public before assessing a civil penalty in any proceeding under Section 311(b)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(ii). Accordingly, EPA has provided the public the opportunity to comment on this matter from May 27, 2009 through June 25, 2009 and received no comments on this proposed action.

The public notice is available on the internet at:
<http://www.epa.gov/region01/enforcement/water/public-notices.html>

In accordance with § 22.45(c)(3), the Final Order is being submitted to you at least 10 days after the close of the public comment period. Once the Final Order has been signed, EPA will file the fully executed CAFO with the Regional Hearing Clerk thereby resolving this matter. If you have any questions related to this matter please call me at 617-918-1796.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeff Kopf', written over the printed name.

Jeffrey Kopf
Senior Enforcement Counsel
U.S. EPA, Region 1

Enclosure

cc: Steve Hall, Downeast Energy Corp. (w/o enclosure)
Wanda Santiago, Regional Hearing Clerk (by hand w/o enclosure)



Cashier's Check

No. 0140420

Notice to Purchaser: In the event this check is lost, destroyed or stolen, the bank's liability for payment of this check shall be limited to the amount of the check. The check should be reported within 90 days.

Date JUN 01, 2009

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NTX

Banking
Center

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DOWNCAST ENERGY
Remitter (Purchased By)

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19-14-3774B 06-2005

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ENVIRONMENTAL PROTECTION AGENCY

Bank of America, N.A.
San Antonio, Texas

VOID AFTER 90 DAYS

Authorized Signature

Donna J. O'Neil

⑈0140420⑈ ⑆114000019⑆ 001641005016⑈

THE ORIGINAL DOCUMENT HAS REFLECTIVE WATERMARK ON THE BACK

THE ORIGINAL DOCUMENT HAS REFLECTIVE WATERMARK ON THE BACK

*In the matter of Downcast Energy
Pickett & CWA-01-2009-0034 11
Oil Spill Liability Trust Fund - 311*

Regular Highlight: Non-Confidential Enforcement

Region 1 Files Proposed Consent Agreement and Final Order In the Matter of Downeast Energy Corporation Resolving Oil Pollution Prevention Regulation Violations Under Section 311(j) of the Clean Water Act. CWA-01-2009-0054. On June 4, 2009, Region 1 filed a proposed consent agreement and final order resolving Spill Prevention Control and Countermeasure ("SPCC") violations at two Downeast Energy Corp. oil storage and distribution facilities located in Maine. The Region determined there were SPCC violations at the two facilities located in Springvale and Waterville, Maine based on an inspection conducted on December 18, 2008, and a follow-up information request to the company. Although the facilities had SPCC plans, the plans were not fully implemented and secondary containment was not adequate at either facility. Downeast Energy has agreed to pay a penalty of \$157,500 to resolve these violations. The final consent agreement and final order will be filed upon the conclusion of the public notice and comment period.

In addition, the Region also entered into an administrative order on consent under Sections 311(c) and (e) of the CWA in which the company will bring its New England facilities into full compliance with the Oil Pollution Prevention regulations by July 1, 2009. The Order specifically applies to seven Downeast Energy facilities located in Maine. During resolution of that enforcement matter, it was determined that there were additional Downeast Energy facilities that were not in full compliance with the Oil Pollution Prevention regulations.

EPA has worked in close coordination with the Maine Department of Environmental Protection in this matter. (Contacts: Alex Sherrin, On-Scene Coordinator (617) 918-1252; Jeffrey Kopf, Senior Enforcement Counsel (617) 918-1796).

Case Conclusion Data Sheet

Enforcement Identifier: 01-2009-

Case Name: DOWNEAST ENERGY CORP.

Facility Name: DOWNEAST ENERGY CORP.

Federal Statute(s) Violated: CWA

Respondents: DOWNEAST ENERGY CORP.

*** Red Fields are required

Settlement Details

Action Type:

☐ Administrative Compliance Orders

ADR Used:

☐ Yes

EMS Requested:

☐ Yes

Compliance/Proposed Order:

Final Order Issued: 06/03/2009

Penalty/Cost Recovery

Federal Penalty by Statute

Cash Civil Penalty Amount Sought:

Notice Pleading:

☐ Yes

Cash Civil Penalty Amount Required
CWA

Penalty Amount

State/Local Penalty Amount:

Federal Collected:

Injunctive Relief/Compliance Activities

Direct Environmental Reduction
(Physical Actions):

Implement Best Management Practice

Cost of Physical Actions:

\$1,000,000.00

Quantitative Environment Impact

Select Pollutant/Chemical/Waste Stream	Annual Amount	Select Units	Select Media
Fuel Oil No. 2	2229000	Gallons	Water

Preventative Actions:

Develop Spill Prevention Plan

Cost of Preventative Actions:

\$50,000.00

Quantitative Environment Impact

Select Pollutant/Chemical/Waste Stream	Annual Amount	Select Units	Select Media

Facility Management or Information Practice
(Non-Physical Actions):

Auditing
Labeling
Monitoring
Planning
Recordkeeping
Site Assessment/Characterization
Testing/Sampling
\$50,000.00

Cost of Non Physical Actions:
If Other, please describe:

SEP

Created by : Jeff Kopf
Date Created: 06/04/2009

Case Conclusion Data Sheet

Enforcement Identifier: 01-2009-

Case Name: DOWNEAST ENERGY CORP.

Facility Name: DOWNEAST ENERGY CORP.

Federal Statute(s) Violated: CWA

Respondents: DOWNEAST ENERGY CORP.

*** Red Fields are required

Settlement Details

Action Type:

☐ Administrative Penalty Order With or Without Injunctive Relief

ADR Used:

☐ Yes

EMS Requested:

☐ Yes

Compliance/Proposed Order:

06/04/2009

Final Order Issued:

~~06/04/2009~~

7/7/09 → sent to J.F.

Penalty/Cost Recovery

Federal Penalty by Statute

Cash Civil Penalty Amount Sought:

Notice Pleading:

☒ Yes

Cash Civil Penalty Amount Required

Penalty Amount

CWA

\$157,500.00

State/Local Penalty Amount:

Federal Collected:

Injunctive Relief/Compliance Activities

SEP

Created by : Jeff Kopf
Date Created: 06/04/2009

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Steve Hall, Facilities-Fleet Manager
Downeast Energy
18 Spring St., P.O. Box 250
Brunswick, ME 04011-0250

Sent To

Street,
or PO

City, State, ZIP

PS Form 3800, August 2006

See Reverse for Instructions

7006 1630 0002 8345 2603



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
1 Congress Street
Suite 1100 - SEL
Boston, MA 02114-2023

June 4, 2009

Steve Hall, Facilities-Fleet Manager
Downeast Energy
18 Spring St., PO Box 250
Brunswick, ME 04011-0250

Certified Mail
Return Receipt Requested

Re: In the Matter of: Downeast Energy Corp.,
Administrative Order on Consent, Docket No. CWA-09-024

Dear Mr. Hall:

Enclosed is a final copy of the Administrative Order on Consent ("Consent Order") (Docket No. CWA-09-024) issued under the authorities of Sections 311(c) and (e) of the Clean Water Act related to bringing the facilities described in the Consent Order into compliance with the Oil Pollution Prevention regulations.

By letter dated June 1, 2009, you requested that the deadlines for compliance with the Oil Pollution Prevention regulations with respect to the Springvale, ME and Biddeford, ME sites be extended to August 1, 2009. For the reasons discussed in your letter, EPA agrees to extend the compliance deadlines for those facilities to August 1, 2009.

Finally, EPA will send you a fully executed copy of the final Consent Agreement and Final Order once the public comment period runs and it is signed by the Regional Judicial Officer.

Please call me at 617-918-1796 if you have any further questions related to this matter.

Sincerely,

Denny Dart, Manager
Water Technical Unit
Office of Environmental Stewardship
U.S. EPA, Region 1

Enclosure

cc: Alex Sherrin, On-Scene Coordinator, EPA Region 1 (via email)
Don Grant, Spill-SPCC Enforcement Coordinator, EPA Region 1 (via email)
Butch Bowie, MEDEP Bureau of Remediation Division of Technical Services (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

_____)	
IN THE MATTER OF)	
)	
DOWNEAST ENERGY CORP.)	ADMINISTRATIVE ORDER
)	ON CONSENT
)	
Brunswick, ME)	
)	
Respondent.)	Docket No. 09-024
_____)	

I. JURISDICTION AND GENERAL PROVISIONS

1. This Order is issued pursuant to the authority vested in the U. S. Environmental Protection Agency ("EPA") by Sections 311(c), (e) and (m) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1321(c), (e) and (m) and Section 308 of the CWA, 33 U.S.C. § 1318.

2. This Order pertains to a substantial threat of a discharge of oil from the Downeast Energy Corp. ("Respondent") oil storage and transfer facilities ("Facilities") listed in Attachment A to this Order.

3. EPA has notified the States of New Hampshire and Maine of this action pursuant to Section 311(e)(1)(B) of the CWA, 33 U.S.C. § 1321(e)(1)(B).

4. The Oil Pollution Prevention Regulations, 40 CFR Part 112, establish procedures to prevent the discharge of oil from non-transportation-related onshore facilities into the waters of the United States or adjoining shorelines pursuant to the authority in Section

311(j) of the CWA, 33 U.S.C. § 1321(j). Owners or operators of onshore facilities that due to their location could reasonably be expected to discharge oil in “harmful quantities” into the waters of the United States must prepare and fully implement a Spill Prevention Control and Countermeasure Plan (“SPCC Plan”) for each facility under 40 C.F.R. § 112.3(a).

II. FINDINGS OF FACT

1. The Facilities listed in Attachment A store and/or distribute petroleum products.
2. Each Facility listed in Attachment A contains at least 1,320 gallons of above ground oil-storage capacity.
3. Each of the Facilities listed in Attachment A is in close proximity to “navigable waters” of the United States as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.
4. On December 18th, 2008 an EPA representative inspected the Springvale, ME Facility (the “Facility”) listed in Attachment A and observed that it was not in full compliance with the Oil Pollution Prevention Regulations.
5. EPA representatives inspected and/or obtained information related to the seven Facilities listed in Attachment A and concluded that they were not in full compliance with the Oil Pollution Prevention Regulations for at least one of the following reasons: inadequate secondary containment, failure to perform integrity testing, and failure to install overfill alarms on storage tanks.

III. CONCLUSIONS OF LAW

1. The Facilities are all “onshore facilit[ies],” as defined in Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

2. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3. As evidenced by the absence of full implementation of the Oil Pollution Prevention Regulations, there exists a substantial threat of a “discharge” as defined in Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), and 40 C.F.R. § 112.2, into navigable waters of the United States in violation of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3).

4. Based on the storage capacity of the Facilities, the quantity of oil which the Facilities may discharge is a harmful quantity within the meaning of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3) and 40 C.F.R. § 110.3(b).

5. The substantial threat of a discharge from the Facilities poses an imminent and substantial threat to public health or welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

6. The actions required by this Order are necessary to protect the public health and welfare of the United States, including fish and other wildlife, public and private property, shorelines, habitat, and other living and nonliving natural resources under the jurisdiction and control of the United States.

7. The actions required by this Order are in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") and are authorized by EPA pursuant to the authority granted in Section 311(c) and (e) of the CWA, 33 U.S.C. § 1321(c) and (e).

IV. ORDER

1. Based upon the Findings of Fact and Conclusions of Law set forth above, EPA hereby orders Respondent to comply with all requirements of this Order and the Oil Pollution Prevention regulations at 40 C.F.R. Part 112, promulgated under Section 311 of the federal CWA, 33 U.S.C. § 1321, and shall specifically perform the following actions:

A. Respondent shall complete all Facility upgrades and corrective actions as described in the Facility Upgrade Implementation Schedule (incorporated herein as Attachment B) ("Implementation Schedule"). Respondent shall submit evidence to EPA (e.g., copies of photographs, work summaries, cost documentation such as work orders, invoices, photographs or tanks dismantled or permanently closed for "permanently closed" facilities, etc.) by August 1, 2009 to document that all Facility upgrades described in the Implementation Schedule have been completed.

B. Respondent shall be in full compliance with the Oil Pollution Prevention regulations at all Facilities for which it has ownership and/or operational responsibilities by no later than July 1, 2009.

C. Respondent shall send reports to:

Alex Sherrin, On-Scene Coordinator
U.S. Environmental Protection Agency - Region 1
1 Congress Street
Suite 1100 (Mail Code HBR)

Boston, MA 02114-2023

V. MODIFICATIONS

1. If Respondent seeks permission to deviate from this Order, Respondent shall submit a written request to EPA for approval, outlining the proposed modification and its basis. Such written request will be submitted to:

Alex Sherrin, On-Scene Coordinator
U.S. Environmental Protection Agency - Region 1
1 Congress Street
Suite 1100 (Mail Code HBR)
Boston, MA 02114-2023

and

Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency – Region 1
1 Congress Street
Suite 1100 (Mail Code SEL)
Boston, MA 02114-2023

Such written request may be submitted by fax to Mr. Sherrin at (617) 918-0252 and to Mr. Kopf at (617) 918-0796.

2. Non-material modifications to any portion of the Order may be made in writing under signature of the Chief, Water Technical Unit, Office of Environmental Stewardship, EPA, Region 1.

3. Respondent shall immediately take all appropriate action to abate or minimize any discharge or substantial threat of a discharge if any incident during the actions conducted pursuant to this Order causes or may cause, either a substantial threat of a discharge or additional discharge of oil or hazardous substances from the Facility. In addition,

Respondent shall immediately notify Alex Sherrin at (617) 918-1252 and shall notify the National Response Center at telephone number (800) 424-8802.

VI. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

1. Violation of or failure to comply with any of the provisions of the foregoing Order may subject Respondent to civil penalties of up to \$37,500 per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund pursuant to Section 311(b)(7) of the Act, 33 U.S.C. § 1321(b)(7) and 40 C.F.R. Part 19.

2. If Respondent is unable to comply with the requirements of this Order, Respondent shall notify Alex Sherrin at EPA at (617) 918-1252 within 24 hours of becoming aware of such inability.

3. Nothing in this Order shall be construed to relieve Respondent of the requirements of the CWA or any other applicable requirements under federal, state or local law. EPA reserves the right to take, direct, or order all actions as necessary as authorized by law for any violation of this Order, and for future or past violations of the CWA.

VII. EFFECTIVE DATE


1. This Order shall be effective upon receipt by the Respondent

VIII. SIGNATORIES

1. EPA and Respondent agree to the Findings of Facts, Conclusions of Law, and this Order.

For the Respondent:

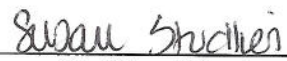
Downeast Energy Corp.



John Peters, President
Downeast Energy Corp.

DATE: 5/29/09

For EPA:



Susan Studlien, Director
Office of Environmental Stewardship
EPA, Region 1

DATE: 06/03/09

ADMINISTRATIVE ORDER ON CONSENT

ATTACHMENT A // LIST OF FACILITIES

1. Downeast Energy
288 River Road
Springvale, ME 04083
2. Downeast Energy
134 Manchester Road
Windham, ME 04062
3. Downeast Energy
14 Depot Street
Kennebunk, ME 04043
4. Downeast Energy
608 Elm Street
Biddeford, ME 04005
5. Downeast Energy
4 Paul Street
Brunswick, ME 04011
6. Downeast Energy
1464 Pond Road
Mt. Vernon, ME 04352
7. Downeast Energy
95 College Avenue
Waterville, ME 04903

ADMINISTRATIVE ORDER ON CONSENT

ATTACHMENT B // IMPLEMENTATION SCHEDULE

FACILITY	ACTION	COMPLIANCE BY
288 River Road Springvale, ME	1. Install berm between loading rack and office building. 2. Install adequate security fencing.	7/1/2009
134 Manchester Rd. Windham, ME	1. Repair secondary containment berm.	6/1/2009
14 Depot Street Kennebunk, ME	1. Perform integrity testing on 150,000-gal tank. 2. Provide secondary containment for small heating oil and kerosene storage tanks.	7/1/2009
608 Elm Street Biddeford, ME	1. Provide secondary containment for off-loading area.	7/1/2009
4 Paul Street Brunswick, ME	1. Install overfill alarms on storage tanks. 2. Perform integrity testing on 14,000-gal tanks.	7/1/2009
1464 Pond Road Mt. Vernon, ME	1. Provide secondary containment for off-loading area and loading rack.	7/1/2009
95 College Avenue Waterville, ME	1. "Permanently close" facility as defined in 40 C.F.R. Section 112.2.	7/1/2009



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
1 Congress Street
Suite 1100 - SEL
Boston, MA 02114-2023

June 4, 2009

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
One Congress Street
Suite 1100, Mail Code RAA
Boston, MA 02114-2023

BY HAND

Re: In the Matter of: Downeast Energy Corp., Docket No. CWA-01-2009-0054
Public Notice and proposed Consent Agreement and Final Order

Dear Ms. Santiago,

Please find enclosed a partially-executed copy of a proposed Consent Agreement and Final Order (CAFO) that will simultaneously commence and settle the above-referenced action. Please note that the proposed CAFO has not yet been signed by the Regional Judicial Officer due to the public notice requirements of the Clean Water Act and the Consolidated Rules of Practice (40 C.F.R. Part 22).


This proposed CAFO is being filed in the event that you receive requests seeking copies of this document in response to a public notice scheduled to be posted on Region 1's web site. The notice announces a 30 day public comment period regarding the proposed CAFO which began on May 27, 2009. EPA will receive public comment on the proposed penalty in this action through June 25, 2009.

The original of the proposed CAFO will be maintained in my personal files until the public notice period expires. It is expected that an original, fully executed CAFO will be filed with your office no sooner than 10 days after the public notice period expires.

Also enclosed for filing is a copy of the public notice and a certificate of service.

Thank you for your attention to this matter.

Sincerely,


Jeffrey Kopf
Senior Enforcement Counsel
EPA, Region 1

Enclosure (Public Notice)

cc: Steve Hall, Downeast Energy Corp. (via email)

In the Matter of: Downeast Energy Corp., Docket No. CWA-01-2009-0054
Public Notice and Proposed Consent Agreement and Final Order

CERTIFICATE OF SERVICE

I certify that the foregoing Public Notice and proposed Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:

Original and 1 copy
hand delivered:

Regional Hearing Clerk
U.S. EPA, Region I
1 Congress Street
Suite 1100 (RAA)
Boston, MA 02114-2023

Copy via email

Steve Hall
Downeast Energy Corp.
18 Spring St.
Brunswick, ME 04011-2318

Date:

6/4/09



Jeffrey Kopf
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100
Boston, MA 02114-2023
tel: (617) 918-1796
fax: (617) 918-0796
email: kopf.jeff@epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	Docket No. CWA-01-2009-0054
)	
DOWNEAST ENERGY CORP.)	CONSENT AGREEMENT AND
)	FINAL ORDER FOR CLASS II CIVIL
)	PENALTY UNDER SECTION
Brunswick, Maine,)	311(b)(6)(B)(ii) OF THE
)	CLEAN WATER ACT
Respondent)	
)	

The Regional Administrator of the United States Environmental Protection Agency, Region I ("EPA"), issues this Consent Agreement and Final Order ("CAFO") to Downeast Energy Corp. ("Respondent"). EPA alleges that Respondent violated Section 311(j) of the Clean Water Act (the "Act"). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 ("Part 22 Rules").

I. DESCRIPTION OF VIOLATIONS

1. EPA alleges that Respondent failed to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) and other provisions of the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

Statutory and Regulatory Authority

2. EPA takes this action under the authority of Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), for violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j).

General Allegations

3. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain such discharges”

4. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention regulations establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the U.S. or adjoining shorelines.

5. Under 40 C.F.R. § 112.3 an owner or operator of an onshore facility subject to the Oil Pollution Prevention regulations must prepare a Spill Prevention Control and Countermeasure (“SPCC”) Plan in writing in accordance with 40 C.F.R. § 112.7, and fully implement such plan.
6. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7), 1362(5).
7. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of an oil storage and distribution facility located at 288 River Rd., Springvale, Maine (“Springvale Facility”), and at 95 College Avenue, Waterville, Maine (“Waterville Facility”).
8. Respondent is engaged in storing, using, and consuming “oil” or oil products located at each Facility within the meaning of 40 C.F.R. § 112.2.
9. Each Facility has an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.
10. Each Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
11. Each Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.
12. “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

13. Based on the above, each Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable waters of the United States or its adjoining shorelines in a harmful quantity.

14. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at each Facility.

Findings of Violation

15. On December 18, 2008 an authorized EPA representative inspected the Springvale Facility to determine compliance with Section 311(j) of the Act, and in particular, the requirements of the Oil Pollution Prevention regulations. EPA obtained information related to the Waterville Facility in response to an Information Request issued to Respondent.

16. Based on these inspections and on documents submitted by Respondent to EPA subsequent to the inspection, EPA identified the following violations:

Failure to Prepare and Implement SPCC Plans

17. Respondent had failed to fully implement an SPCC plan at each Facility in accordance with the provisions of 40 C.F.R. § 112.7 in violation of 40 C.F.R. § 112.3.

18. Respondent's failure to fully implement an SPCC plan for each Facility violated 40 C.F.R. § 112.3. Respondent is in violation of these requirements each day beginning with the period it was required to implement a plan under 40 C.F.R. Part 112, and ending when it fully implements a written, Professional-Engineer certified, SPCC Plan for the Facility consistent with all the requirements of 40 C.F.R. Part 112, or until it no longer owns or operates the Facility, or until the Facility is "permanently closed" in accordance with 40 C.F.R. § 112.2.

19. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violations continue for violations occurring between March 15, 2004 and January 12, 2009, and \$16,000 per day for each day during which the violations continue, for violations occurring after January 12, 2009.

II. CONSENT AGREEMENT

EPA and Respondent agree that the above matter constitutes a disputed claim and that settlement of the above matter is in the public interest, and that entry of this CAFO without litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this action hereby stipulate as follows:

20. Respondent admits the jurisdictional allegations in Section I above.

21. Respondent neither admits nor denies the specific factual allegations contained in Section I above.

Waiver of Rights

22. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

Penalty

23. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of ONE-HUNDRED FIFTY-SEVEN THOUSAND FIVE-HUNDRED DOLLARS (\$157,500)

Payment Terms

24. Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

25. Within 30 days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency" and referencing the title and docket number of the action ("In the Matter of Downeast Energy, Docket No. CWA-01-2009-0054") and "Oil Spill Liability Trust Fund - 311" in the amounts specified in Paragraph 23 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

26. Respondent shall note on the penalty payment check the title and docket number of this case. Respondent shall submit copies of the check to the following people:

Wanda Santiago
Regional Hearing Clerk (RAA)
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

and

Jeffrey Kopf
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

27. The proposed administrative civil penalty has been determined in accordance with Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, and Section 311(b)(8) of the Act. For purposes of determining the amount of any penalty to be assessed, Section 311(b)(8) requires EPA to take into account the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require. In developing the proposed settlement penalties in this CAFO, Complainant has taken into account the particular facts and circumstances of this case with specific reference to the factors identified at Section 311(b)(8) of the Act.

28. The penalty above represents a civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

General Provisions

29. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), failure by the Respondent to pay the penalty amounts relating to the CWA violations assessed by this CAFO in full by the date required shall subject the Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates from the effective date of the CAFO. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Further, under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis any CWA penalty payment assessed by this CAFO, Respondent shall be required to pay, in addition to such amount and interest, attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. Interest will be assessed pursuant to 31 C.F.R. § 901.9(b), promulgated pursuant to 31 U.S.C. § 3717. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

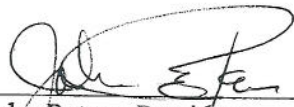
30. EPA states that it has provided a thirty day opportunity for public notice and comment on this proposed CAFO pursuant to Section 311(b)(6)(C)(i) of the Act, 33 U.S.C. § 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), and has not received any public comments.

31. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to herein.

32. Except as described in paragraph 29 of the Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

FOR DOWNEAST ENERGY CORP.:

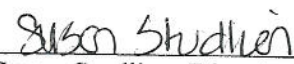
Date: 5/29/09



John Peters, President
Downeast Energy Corp.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 06/03/09



Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

III. FINAL ORDER

33. In accordance with 40 C.F.R. § 22.18(b), the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

34. Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Final Order shall become effective 30 days from today pursuant to Section 311(b)(6)(D) of the CWA, 33 U.S.C. § 1321(b)(6)(D).

Date: _____

LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

Date of Notice: May 26, 2009

Public Notice Number: PN2009-0010

Comment Period: May 27, 2009 - June 25, 2009

Action: Notice of Proposed Assessment of Class II Clean Water Act Section 311(b)(6) Administrative Penalty and Opportunity to Comment

Under Section 311(b)(6)(B)(ii) of the Clean Water Act (CWA), 33 U.S.C. § 1321(b)(6)(B)(ii), EPA is authorized to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Pursuant to 40 C.F.R. Part 19 (Adjustments of Civil Penalties for Inflation) promulgated pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, in a Class II proceeding under 311(b)(6)(B)(ii), the maximum civil penalties that may be administratively assessed have been increased as follows: For violations occurring between March 15, 2004 and January 12, 2009, up to \$11,000 per violation per day for each day during which the violation continues; and, for violations occurring on or after January 13, 2009, up to \$16,000 per violation per day for each day during which the violation continues, up to a maximum of \$177,500. Class II proceedings are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22").

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in Part 22. The deadline

for submitting public comment on a proposed Class II penalty order is thirty (30) days after issuance of public notice.

Pursuant to Section 311(b)(6)(B)(ii), EPA is providing public notice of the following proposed Class II administrative penalty assessment:

Name and Mailing Address of Respondent: Downeast Energy Corp., 18 Spring Street, Brunswick, ME.

Name and Address of Facilities or Sites Addressed by Complaint:

288 River Rd., Springvale, ME
95 College Ave., Waterville, ME.

Description of Business or Activity Conducted by the Respondent: Heating oil, propane, and building supply company.

Description of Violations alleged in Complaint subject to public comment: Failure to comply with Oil Pollution Prevention regulations in violation of 311(b)(3) of the Clean Water Act, 33 U.S.C. § 1321.

Proposed penalty: \$157,500

Name of case: In the Matter of: Downeast Energy Corp.

Docket numbers: CWA-01-2009-0054

Date Filed with Regional Hearing Clerk: N/A

Name, Mailing Address, and Telephone Number of Regional Hearing Clerk: Wanda Santiago, U.S. EPA, Region 1, One Congress Street, Suite 1100 (RAA), Boston, Massachusetts 02114; (617) 918-1113.

FOR FURTHER INFORMATION: Persons wishing to receive a copy of Part 22, review the complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for the proceeding is located in the EPA Regional Office at One Congress Street, Boston, Massachusetts, and the file will be open for public inspection during normal business hours.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty (30) days after issuance of this notice.

* * * PRIVILEGED/CONFIDENTIAL/DO NOT RELEASE UNDER FOIA * * *
Standard Form to Specify Office of Regulatory Enforcement
Involvement in Cases

Case name: In the Matter of Downeast Energy Corp.

Location of facility: City: Brunswick State: ME Region 1

Forum (check one):

ALJ (or other presiding officer) X
District or Circuit Court _____

EAB _____
(specify District/Circuit: _____)

Status of case (check all that apply):

Prefiling, in development X
Filed and pending _____
Filed and stayed _____
Filed and active _____
Dispositive pleadings imminent _____
Trial or hearing imminent _____
Settlement negotiations ongoing _____

Primary violations (narrative or listing of sections):

Section 311(j) of the CWA (failure to comply with Oil Pollution Prevention Regulations, 40 C.F.R. Part 112)

Nationally significant issue(s):

None

Regional legal and program contacts (names, phone and FAX #s):

Legal: Jeffrey Kopf, ph. 617-918-1796, fax 617-918-0796

Program: Alex Sherrin, ph. 617-918-1252, fax 617-918-0252

Nature of Office of Civil Enforcement involvement/assistance requested by Region:

None.

Signature: 
Appropriate Regional Manager

5/27/09
Date Signed

Concur: _____
Appropriate CED Manager

Date Signed



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023

MEMORANDUM

DATE: May 18, 2009

SUBJ: Executive Summary for Pre-negotiated CWA 311 Consent Agreement and Final Order ("CAFO") (Docket No. CWA-01-2009-0054) and Administrative Order on Consent ("Consent Order") with Downeast Energy Corp., Brunswick, ME (Docket No. 09-308-019)

FROM: Jeffrey Kopf *JK*
Senior Enforcement Counsel (617-918-1796)

Alex Sherrin *AS*
On-Scene Coordinator ("OSC") (617-918-1252)

Cosmo Caterino *CC*
Oil Program Coordinator (617-918-1264)

THRU: Tonia Bandrowicz
Senior Enforcement Counsel (617-918-1734)

Denny Dart, Chief
Water Technical Unit (617-918-1850)

Steven R. Novick, Chief *SN*
Emergency Response & Removal Section II
Oil Program Manager (617-918-1271)

TO: Susan Studlien, Director
Office of Environmental Stewardship

I. Introduction, Type and Location of Facility

This action involves Clean Water Act ("CWA") violations (i.e., failure to comply with the Spill Prevention Control and Countermeasure ("SPCC") provisions of the Oil Pollution Prevention regulations) at seven Downeast Energy ("Downeast") facilities located in Maine. EPA inspected Downeast's Springvale, ME facility in December 2008. EPA obtained information about the other six facilities through information provided in response to an information request. All facilities in this matter are bulk fuel oil storage facilities.

II. Type of Action and Nature of Violations

Enclosed for signature is a pre-negotiated Consent Agreement and Final Order ("CAFO") resolving Downeast's CWA 311 violations. On December 18, 2008, OSC Alex Sherrin inspected

Downeast's Springvale, ME oil storage facility. Although this facility had an SPCC plan, the plan was not fully implemented. The facility lacked secondary containment for its loading rack and the facility did not have security fencing. In addition, the overfill protection alarms were not activated. Downeast indicated similar violations at its other facilities in response to an information request.

III. Terms of Settlement

The CAFO requires Downeast to pay a \$157,500 penalty to the "Oil Spill Liability Trust Fund." This penalty is consistent with EPA's Civil Penalty Policy for Violations of Section 311(j) of the Clean Water Act. It is also consistent with similar settlements with CN Brown, Rice Oil, and Inergy Propane LLC, which also paid penalties of \$157,500 for similar violations.

In addition to the CAFO, Downeast has agreed to enter into an administrative order on consent ("Consent Order") which includes a schedule to bring all seven facilities into compliance with the Oil Pollution Prevention regulations by July 1, 2009.

IV. Significant Issues

There are no significant issues associated with this case.

V. Contacts with the Company

On December 18, 2008, OSC Sherrin inspected Downeast's Springvale, ME facility. On December 30, 2008, EPA sent an information request letter to Downeast. The company responded to the information request on January 30, 2009.

On March 6, 2009, the Region sent a letter to Downeast offering the company the opportunity to pre-negotiate resolution of this matter. Downeast indicated its interest in this approach. The staff contacts below conducted conference calls with Downeast representatives on several occasions and were able to reach terms of settlement, memorialized in the enclosed CAFO and Consent Order.

VI. External Interest and/or Contacts

EPA has kept Butch Bowie, ME DEP Bureau of Remediation Division of Technical Services, informed throughout development of this case.

VII. EPA Staff Contacts

The OSRR OSC is Alex Sherrin (617-918-1252); the staff attorney is Jeffrey Kopf (617-918-1796).

FACILITY NAME Downeast Energy Corp

ADDRESS: _____

REQUESTOR: Jeff Kopf OTIS +

PROGRAM	RESPONDENT	RESPONSE	DATE
EPCRA 313	CHRISTINE BARRY		
EPCRA N-313	CHRISTINE BARRY	+	
FIFRA	SHARON HAYES	+	
TSCA CORE	SHARON HAYES	+	
TSCA PCB	SHARON HAYES	+	
CAA	CHRISTINE BARRY		
NPDES	Kospman	+	
PRETREATMENT	NEIL HANDLER	+	
SDWA	NEIL HANDLER	+	
RCRA	LISA PAPETTI	+	
OUST	BILL TORREY	+	
SPCC	DON GRANT	SPLC	
WETLANDS	DENISE LEONARD	+	
SUPERFUND	ARTHUR MARI	+	
SUPERFUND REMOVALS	O'HALLORAN / SACONE	+	

follow-up sent to C. Barry 5/28

Date: Form started May 18, 2009

Name of Person Completing Form: Jeff Kopf

Name of Violating Facility: Downeast Energy Corp., Brunswick, ME

Date Case Reviewed by OES's Criminal Enforcement Counsel: P Kenyon, May 18, 2009 said to go forward with civil case

This form certifies that an enforcement screen was conducted to determine whether the subject of this case 1) is a repeat violator in the same program; 2) has prior violations in the same program; 3) has current violations under other statutes; 4) has suspected/potential violations under other statutes; or 5) was subject to current or past enforcement under other statutes.

Issues considered as part of the screening process include:

- SEP potential—including pollution prevention or auditing projects *No*
- Environmental Justice issues, including: *None*
 - are there cumulative health and/or environmental risks in the area?
 - is community outreach appropriate?
 - are there opportunities to address EJ issues in the settlement?
- Tribal issues, including: *None*
 - do the violations impact tribal land or resources?
 - is outreach to the tribe appropriate?
 - are there opportunities to address tribal issues in the settlement?
- Suspension or debarment potential *No*
- Potential for use of expedited settlement approach or ADR *Pre settlement Negotiations*
- Paperwork Reduction Act Issues—any lapse or display issues with information collection request regulations to be cited in the complaint? *No*
- Small business issues—are there Equal Access to Justice concerns in this case? Was a SBREFA info sheet provided to the violator? *No* *Yes*
- Nationally significant issues, and judicial enforcement potential *No*
- Litigation support needs *None*

Signature of Person Completing Form:

Jeff Kopf